



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Peterson Builders, Inc.--Reconsideration

**File:** B-244614.2

**Date:** April 7, 1992

Maurice J. Mountain, Esq., Barton, Mountain & Tolle, for the protester.

Timothy A. Chenault, Esq., United States Coast Guard, Department of Transportation, for the agency.

Glenn G. Wolcott, Esq. and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Request for reconsideration of dismissal of one ground of protest as untimely is denied where request identifies no legal or factual error in the determination that a solicitation requirement providing the particular basis for protest was apparent on the face of the solicitation, and the protester elected not to challenge that provision until after its proposal had been rejected.

2. Request for reconsideration of decision denying protest that agency improperly evaluated protester's proposal is denied where protester merely reiterates its disagreement with the agency's evaluation of its proposal.

### DECISION

Peterson Builders, Inc. (PBI) requests reconsideration of our decision, Peterson Builders, Inc., B-244614, Nov. 1, 1991, 91-2 CPD ¶ 419, in which we dismissed in part and denied in part its protest challenging the United States Coast Guard's actions under request for proposals (RFP) No. DTCG23-90-R-30024, for the replacement of ocean-going buoy tenders.

We deny the request for reconsideration.

The Coast Guard issued this RFP on May 16, 1990, seeking to acquire a new class of ocean-going buoy tenders to deploy, service, and retrieve the large navigational buoys that mark coastal shipping lanes. The RFP listed various factors that

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would be evaluated<sup>1</sup> and stated that proposals would be assessed with regard to: (1) the offeror's understanding of the requirement, and (2) the soundness of the offeror's approach. The RFP provided that the agency evaluators would use an evaluation scheme in which: blue/exceptional meant the proposal exceeded specified performance requirements with a high probability of success and no significant weaknesses; green/acceptable meant the proposal met the required standards with good probability of success and weaknesses which could be readily corrected; yellow/marginal meant the proposal failed to meet required standards, with low probability of success and significant but correctable deficiencies; and red/unacceptable meant the proposal failed to meet minimum requirements and would require major revisions in order to comply with the solicitation requirements.

On October 10, six offerors, including PBI, submitted initial proposals. The source evaluation board (SEB) with the assistance of a technical evaluation team (TET) conducted a preliminary review of the proposals. The TET prepared a listing of "strong points," "shortcomings," and "risk assessments," and identified areas in the proposals which were deficient or where clarifications were necessary. By letter dated December 3, the agency sought proposal clarifications and corrections from each offeror. Upon receiving the responses, the TET evaluated the proposals. PBI's proposal was rated "yellow," that is deficient, with regard to several technical evaluation factors, and was rated no higher than green/acceptable under any of the evaluation factors. The agency conducted another round of discussions followed by a request for best and final offers (BAFOs). Upon evaluating PBI's BAFO, the agency concluded that it was still deficient in several areas and that no portion of its proposal was better than green/acceptable. Based on this final evaluation, the agency rejected PBI's proposal, whereupon PBI filed a protest with our Office.

PBI first protested the agency's rating of PBI's proposal as "yellow," in the area of "stationkeeping," the most important technical evaluation factor. In this regard, the RFP required offerors to propose integrated ship controls that would enable the proposed vessel to automatically stationkeep (hover) around a fixed point in an open seaway. The RFP required that this stationkeeping function be performed through the use of a computer integrated system,

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<sup>1</sup>The RFP listed, in descending order of importance, the following technical evaluation factors to be subjectively evaluated and rated: stationkeeping; buoy handling; seakeeping; survivability/stability; arrangements; ship system integration; and design plan.

referred to as a Dynamic Positioning System (DPS), using both visual and electronic methods. The agency found that PBI's proposal had significant deficiencies in this area because, among other things, the visual method which PBI proposed as part of its DPS consisted of a "taut wire system" that was not computer integrated to the DPS. Despite the multiple discussions conducted during which the agency expressed its concern in this regard, PBI failed to adequately demonstrate how position information from its "taut wire system" would be computer integrated into the DPS. Accordingly, the agency concluded that PBI's proposal demonstrated a lack of understanding with regard to this most important technical evaluation factor.

Our review of the record established that, despite multiple discussions, PBI never demonstrated how both visual and electronic navigational data would be computer integrated into its DPS. Accordingly, we found no basis to question the agency's downgrading of PBI's proposal with regard to stationkeeping. PBI's reconsideration request generally challenges our conclusion regarding the propriety of the agency's evaluation, but provides no basis to reconsider this conclusion since PBI does not identify any specific legal or factual error in our determination that the agency reasonably found PBI's proposal deficient with regard to stationkeeping.

PBI next protested that its proposal should not have been rated "yellow" with regard to the technical evaluation factor "arrangements." Under this factor, proposals were evaluated on the basis of their proposed arrangement of space locations including: the pilot house; the engine room and major auxiliary spaces; and the engineering control center (ECC).

Prior to submission of initial proposals, the Coast Guard issued an amendment to the RFP requiring that the ECC be located "entirely within the watertight boundaries of the main machine space." PBI's initial proposal failed to meet this requirement. Following discussions, PBI proposed in its BAFO to place the ECC in the main machinery space; however, PBI's BAFO also reduced the size of the ECC and failed to include the main propulsion electrical power switchboard, the ship service switchboard, or the desk and bookcases--all of which were required by the RFP. Accordingly, the agency found PBI's proposal to be deficient under this technical evaluation factor.

In responding to the agency report, PBI stated:

"PBI reasonably believed that the Coast Guard would be willing to modify the ECC arrangement requirements once the parties were able to evaluate the issue in detail."

Since PBI was clearly on notice of the ECC requirement under the solicitation prior to submitting its BAFO but elected not to challenge the requirement until after its proposal was rejected, we dismissed this portion of its protest as untimely. See 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

In its reconsideration request, PBI argues that it did not understand the RFP to establish a firm requirement regarding placement of the ECC. PBI asserts "there was no way that PBI could have determined in advance what alternate arrangement of the ECC the Coast Guard would desire.."

PBI's argument that the RFP somehow provided flexibility regarding placement of the ECC is without merit in view of the plain language of the RFP. Further, PBI's suggestion that it was unaware of this requirement is directly contradicted by the statements which PBI made earlier under its initial protest. In its response to the agency report, PBI noted that the RFP amendment regarding placement of the ECC "presented PBI with something of a dilemma," and added:

"PBI felt that the Coast Guard's revision in Amendment Three directing that the ECC be located entirely within the watertight boundaries of the 'main' machinery space had not taken into account the fact that PBI and other offerors might choose to propose a diesel-electric propulsion system that required in effect two main machinery spaces, and that some relaxation of the Amendment Three language would be required under the circumstances."

Notwithstanding the "dilemma" created by the ECC requirements and PBI's perception that "some relaxation of the [RFP] language would be required," PBI elected not to protest the specification prior to submitting its proposal. The Coast Guard properly did not "relax" the ECC requirement after proposals were submitted, and PBI may not now challenge that requirement. 4 C.F.R. § 21.2(a)(1).

PBI also protested the Coast Guard's application of the color-based evaluation scheme, arguing that its proposal should have been rated higher. In short, PBI disagreed with the agency's technical evaluation of its proposal. To support its argument, PBI converted the agency's color-based

evaluation system to the following numeric system: blue--100 points; green--75 points; yellow--65 points; and red--0 points.

As we stated in our initial decision, PBI's creation of an alternative numeric evaluation system provides no basis for concluding that the agency erred in its evaluation of proposals.<sup>2</sup> PBI's numeric system contains a number of erroneous assumptions. For example, under PBI's evaluation scheme, the agency would be required to give an offeror 65 points for a portion of its proposal that was rated "yellow" (that is, a portion of its proposal that had significant deficiencies and failed to comply with the RFP requirements) while a similar portion of another proposal that fully met the RFP's requirements would receive only 75 points. We disagree with PBI's view that, despite its inability to correct significant proposal deficiencies following multiple discussions, PBI's proposal should have been rated only slightly lower in those deficient areas than a similar proposal that fully met the RFP's requirements. This is particularly true where, as here, the evaluation scheme provided that an offeror's understanding of the RFP requirements was one of the criteria on which proposals would be rated.

PBI's basis for challenging the agency's evaluation scheme errs in other respects. For example, PBI goes to great lengths to quantify the "strong points," "risks," and "weaknesses" listed on the evaluators' worksheets, again assigning point values (both positive and negative) for each of these items. PBI then asserts that the aggregate point values it derived from its quantification of these adjectival assessments demonstrate that PBI's proposal should have received higher color ratings. PBI's analysis again rests on a faulty assumption, namely that any given "strong point," "risk," or "weakness" was equally important in the minds of the evaluators. On the contrary, it is clear that the importance of the various positive and negative factors the evaluators identified varied significantly within and between the proposals. It is well-settled that, within the parameters of the evaluation scheme established in the solicitation, agency evaluators may and should use their subjective judgment in assessing the

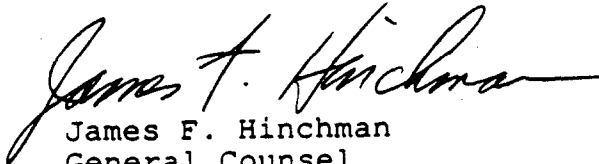
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<sup>2</sup>We note that the evaluation scheme contained in the RFP did not contemplate numeric quantification of the merits of the various proposals. Even where numeric point scores are used, they are only guides to intelligent decision-making and, generally, do not mandate selection of a particular awardee. See Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427; Ferguson-Williams, Inc., B-231827, Oct. 12, 1988, 88-2 ¶ 344.

relative importance of the various strengths, risks, and weaknesses contained in the proposals being evaluated. See, e.g., Bunker Ramo Corp., supra. PBI's assertion to the contrary is without merit.

In summary, PBI's request for reconsideration regarding the agency's evaluation of its proposal simply demonstrates that it continues to disagree with the judgment of the agency's evaluators, and, therefore, with our determination of the reasonableness of that judgment. The fact that a protester disagrees with an agency's evaluation does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. PBI has not shown that our prior decision contains any errors of fact or law or information not previously considered that warrant reversal or modification of our decision. See 4 C.F.R. § 21.12(a).

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel